

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 OCT 29 A 11: 12

In the matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Brightwood, Madras, Prineville and Bend,
Oregon)¹)
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MM Docket No. 00-87/

RM-9870

RM-9961

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 17, 2001**Released: October 26, 2001**

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making* ("Notice")² issued at the request of Muddy Broadcasting Company ("Muddy"), proposing the allotment of Channel 251C3 at Brightwood, Oregon, as the community's first local aural transmission service. In response to the *Notice*, Muddy filed comments reiterating its intention to file for the channel, if allotted.

2. Also in response to the *Notice*, Madras Broadcasting ("Madras Broadcasting") filed comments and a counterproposal proposing the allotment of Channel 251C1 at Madras, Oregon as the community's first local aural transmission service.³ Muddy, Larry D. Eckhardt, Chief, Hoodland Fire District, No. 74 ("Eckhardt"), Kylie B. Milne, President, Mt. Hood Area Chamber of Commerce ("Milne") and Combined Communications, Inc. ("Combined Communications")⁴ filed reply comments. In response to the Public Notice of Madras Broadcasting's counterproposal, Muddy filed timely comments in opposition, and Madras Broadcasting filed a response. Muddy also filed a motion to strike Madras Broadcasting's reply comments and Madras Broadcasting opposed the motion to strike. We issued an *Order to Show Cause*⁵ to Combined Communications, Inc. ("Combined"), licensee of Station

¹ The communities of Madras, Prineville and Bend have been added to the caption.

² 15 FCC Rcd 8964 (2000).

³ Public Notice of the filing of the counterproposal was given on September 20, 2000, Report No. 2440.

⁴ We will accept the comments filed by Combined Communications, which were filed one day after the comment deadline. Combined Communications states that on the comment deadline it attempted to file its comments electronically using the Commission's Electronic Comment Filing System ("ECFS") but was informed by the Commission that comments could not be filed electronically in this proceeding. It therefore sent the comments by overnight courier. Acceptance of these comments will allow for a complete record and has not delayed resolution of this proceeding.

⁵ 15 FCC Rcd 22,443 (2000).

KTWS(FM), Bend, Oregon, who filed a response.⁶

3. In support of its petition for rulemaking, Muddy states that Brightwood is a community for allotment purposes, and that it is deserving of an allotment. It is part of a "synergistic group" of several communities which are widely referred to as "Hoodland" or the "Mt. Hood Corridor," which have actually considered consolidating into one city. It states that Brightwood was chosen as the community for purposes of this proceeding because it is one of the largest communities in this cluster and is near the center of the anticipated primary service area. In addition, Brightwood was the first town in the area and established the first post office in the area. Muddy states that many municipal services are provided by Brightwood itself, such as post office, fire department branch. It has its own zip code and telephone listing and has a local newspaper and numerous businesses. It admits, however, that many of the attributes of a community are provided outside of Brightwood but within the "Hoodland" corridor. It states that the community has a 1999 permanent resident population of 998 persons, but submits that the population of the entire area, 4,500 persons as a relevant factor herein. Muddy filed comments in which it reiterated its intention to apply for the channel, bid at auction, and if successful, promptly construct the station.

4. In its counterproposal, Madras Broadcasting proposes the allotment of Channel 251C1 at Madras, Oregon, as the community's first local aural transmission service. To accommodate the Madras allotment, it also requests the substitution of Channel 253C3 for Channel 252C3 at Bend, Oregon, and the modification of the license of Station KTWS(FM) to specify the alternate Class C3 channel, and the substitution of Channel 255C3 for unoccupied and unapplied-for Channel 254C3 at Prineville, Oregon. Madras Broadcasting states that the substitute channels can be allotted in compliance with the Commission's minimum distance separation requirements and used at Station KTWS(FM)'s licensed transmitter site and Prineville's reference coordinates. Madras Broadcasting states that Madras, an incorporated community with a 1990 U.S. Census population of 3,443 persons, is governed by a mayor and six city council members, and has local taxing authority. The community has its own water and wastewater treatment system, airport, health clinic, police department, newspaper, *The Madras Pioneer*, and Madras Industrial Park. Madras Broadcasting states that a Madras station will provide service to 56,614 people within an area of 16,422 square kilometers. Finally, Madras Broadcasting states that it will reimburse the licensee of Station KTWS(FM) for the reasonable costs of changing channels.

5. Muddy states that both Brightwood and Madras are deserving of a local transmission service. However, it states that Brightwood should receive the allotment because it has no transmission service, while Madras has transmission service from FM and TV translators. It also states that both proposals can be accommodated because, although there are no alternate channels available for allotment at Brightwood, there are at least six alternate channels that can be allotted at Madras. In addition, Muddy contends, these alternate channels are preferable to Channel 251C1 because they would not require channel substitutions elsewhere, would provide better service to Madras, and/or would provide primary service to a larger population. Given these facts, Muddy argues that allotting a channel to Madras which requires two channel substitutions is neither "prudent nor necessary." Further, it argues that one of the channel changes involves an on-air station and such changes often result in listener confusion and loss of listenership. Finally, Muddy submits that in light of these facts, Madras Broadcasting's proposal would not serve the public interest. It proposes that both Channel 251C3 be allotted at Brightwood, and one of the following alternate channels be allotted at Madras: Channels 291C1, 291C2, 227C3, 299C3, 293A, 227A.

⁶ We note that Muddy filed a motion to strike as untimely Madras Broadcasting's responsive comments to Muddy's opposition to its counterproposal and Madras Broadcasting opposed the motion to strike. Muddy argues that all comments were required to be filed within the 15 day time limit set in the Public Notice. We deny the motion to strike and accept Madras Broadcasting's comments. Consideration of these comments allows us to resolve this proceeding on the basis of a complete record and has not delayed resolution of this proceeding.

6. Muddy further claims that on a comparative basis, the proposal to Brightwood would better serve the public interest than the Madras proposal because it would provide service to the "Hoodland" area which has a combined permanent population of 4,777 persons and a seasonal population of 11,000 persons. It also claims that at full power and tower height, its proposal would theoretically provide 60dBu service to 135,372 persons, compared to 56,614 persons served within the 60dBu of the Madras proposal. In addition, it argues that unlike Brightwood, Madras receives 60 dBu service from at least six radio stations and by FM and TV translators.

7. Muddy also questions whether Channel 251C1 can be allotted to Madras in compliance with the Commission's technical requirements, arguing that there is "massive" terrain blockage between the proposed allotment site and the community. It submits that a Longley-Rice point to point propagation study, using a 60 meter (200 foot) tower, shows that the Madras center-city reference coordinates would receive a signal of 57.13 dBu. To overcome this blockage and provide line of sight service to Madras, Muddy states that a tower of 800 meters (2,625 feet) would be required, which would constitute a hazard to air navigation according to FAA standards, citing 14 CFR §77.17 (c).

8. Combined Communications objects to Madras Broadcasting's counterproposal. It argues that the counterproposal is an inefficient allocation of spectrum and imposes an undue burden on Combined Communications in light of the fact that there are other channels available for allotment at Madras. It argues that the channel substitution for Station KTWS(FM) as proposed by Madras Broadcasting should not be made because it will require the station to change channels and reestablish its identity at a new dial location. Combined Communications points to the experience of its Station KLRR which was ordered to change channels, which resulted in prolonged out-of-pocket reimbursement negotiations, and challenge and uncertainty. The station lost audience because of the new dial position and has not recovered from that loss. Combined Communications questions whether it will be reimbursed for its expenses in this case because it is dealing with a future licensee who will prevail at auction and is totally unknown at this time. Therefore, it submits that the resolution which best serves the public interest is the allotment of a channel at Madras that will not require Station KTWS(FM) to change channels and also allows Brightwood to receive its first local aural transmission service. It suggests Channel 227C1, which would work if Channel 230A is substituted for Channel 228A at Condon, Oregon.

9. *Discussion.* We will make the allotment to Madras. We find that both Brightwood and Madras are communities for allotment purposes and deserving of an allotment, although the evidence in support of the community status of Madras is far more substantial than that of Brightwood. There are no alternate channels available for allotment at Brightwood. There are alternate channels available for allotment at Madras, but none are feasible or equivalent to the requested Channel 251C1, and the proponent has stated that it has no interest in a lower class channel. While two equivalent channels were suggested, Channels 291C1 and 227C1, neither can be used. Channel 291C1 would not work because of massive terrain blocking, and Channel 227C1 would require the introduction of a new community, which is prohibited after the expiration of the comment period.⁷ With respect to Muddy's assertion that Channel 251C1 at petitioner's site would require an excessively tall tower to overcome a massive terrain obstruction, our staff engineering analysis does not bear this out. Our staff did confirm, however, that Channel 291C1 would be blocked by a terrain obstruction. In addition, as Madras Broadcasting showed in its comments, there are many fully-spaced possible transmitter sites from which a station could provide service to the community on Channel 251C1 without any terrain issues.

10. Since there are no alternate channels available for allotment to either community, we have compared the two communities to determine which would be more deserving of the allotment in the

⁷ See *Memorandum Opinion and Order* in MM Docket No. 93-13 (Blanchard, Louisiana, and Stephens, Arkansas), 10 FCC Rcd 9828 (FCC, 1995).

public interest. Each would receive its first local aural transmission service and would trigger priority (3) of the FM allotment priorities.⁸ In regard to the FM and TV translators alluded to by Muddy, we note that these are secondary services with the primary station being licensed to a different community. As such, we do not consider these to be local services for Madras under the FM allotment priorities.

11. On a comparative basis of these two *de novo* allotments, Madras, the larger community with 3,443 persons, prevails. While Muddy attempts to make a showing that an allotment to Brightwood would provide the "Hoodland" area a much deserved allotment, and the comments of both Eckhardt and Milne also support the allotment of Channel 251C3 to Hoodland/Brightwood area,⁹ their comments do not address the specific attributes of Brightwood as a community, and we are constrained to consider the attributes of Brightwood itself, not the surrounding area. Madras Broadcasting correctly argues that in this analysis we consider only the population of the proposed community of license, Brightwood, whose 1990 U.S. Census population is 788 persons, rather than the 4,777 population proffered by Muddy which apparently includes Brightwood as well as census population data attributed to the zip codes for the communities of Welches and Rhododendron. The Commission has generally found that the public interest would be better served by the provision of a first local aural transmission service to the larger community.¹⁰ In addition, we note that Muddy's assertion that Channel 251C3 at Brightwood might provide reception service to a larger population is irrelevant to our discussion since there is no showing that any of the reception service area would be receiving a first or second fulltime aural service and thus qualify for a higher allotment priority.

12. With respect to Combined Communication's argument that the allotment of Channel 251C1 at Madras is an inefficient use of the spectrum, that argument was based on the incorrect premise that other equivalent channels are available for allotment at Madras. With respect to the argument that the proposed Madras allotment imposes an undue burden on Station KTWS(FM) by requiring it to change channel, we note that we are not convinced that the one-channel shift required here will cause enough detriment to the station as to outweigh the public benefit in the new station at Madras. Finally, as to Combined Communications's concern about reimbursement, Madras Broadcasting has committed to such reimbursement, but it is well settled that reimbursement will come from the party who benefits from the changes; *i.e.*, whoever becomes the permittee on the new channel.¹¹ Negotiation for reimbursement is to be done privately between the parties, and only in the event of a dispute will the Commission be involved.¹²

⁸ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (FCC 1982).

⁹ Both Eckhardt and Milne support the allotment of Channel 251C3 to Hoodland/Brightwood area, pointing out the benefits to the public that a local station would bring. Eckhardt states that he has lived in the area and been fire chief for more than nine years. He states that the fire district serves approximately 6,000 year-round and 11,000 seasonal residents and responds to approximately 700 calls a year from three stations, including one in Brightwood. According to Eckhardt, the area attracts millions of visitors and 4.5 million vehicles annually. Milne, an area resident for 23 years, states that the area provides the only year-round skiing and snowboarding in North America and on a busy weekend can expect as many as 100,000 people staying in the area. In addition, she states that the Visitor Information Center, which is located in Brightwood, is the busiest in the state, with over 113,000 visitors last year.

¹⁰ See *Memorandum Opinion and Order* in MM Docket No. 93-13 (Blanchard, Louisiana, and Stephens, Arkansas), 10 FCC Rcd 9828 (FCC, 1995); *Report and Order* in MM Docket No. 95-88 (Rose Hill, Trenton, Aurora and Okracoke, North Carolina), 11 FCC Rcd 21223 (1996), *recon. denied*, 15 FCC Rcd 10739 (2000) *app. for review pending*.

¹¹ *Second Report and Order* in Docket 16662 (Circleville, Ohio), 8 FCC 2d 159 (1967).

¹² *Id.*

13. In view of the above, we will allot Channel 251C1 at Madras, Oregon. Channel 251C1 can be allotted at Madras consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at a site 36.6 kilometers (22.7 miles) northeast of the community.¹³ To accommodate the allotment at Madras, we will substitute Channel 253C3 for Channel 252C3 at Bend, Oregon and modify the license for Station KTWS(FM) to reflect the channel change. Channel 253C3 can be substituted for Channel 252C3 at Bend consistent with the Commission's Rules at Station KTWS(FM)'s licensed site.¹⁴ Channel 255C3 can be substituted for Channel 254C3 at Prineville consistent with the Commission's Rules at the vacant allotment site.¹⁵

14. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED That effective December 10, 2001, the FM Table of Allotments Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Madras, Oregon	251C1
Bend, Oregon	253C3
Prineville, Oregon	255C3

15. IT IS FURTHER ORDERED That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Combined Communications
Station KTWS(FM)
711 N.E. Butler Market Rd.
Bend, OR 97701

16. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KTWS(FM) IS MODIFIED to specify operation on Channel 253C3 in lieu of Channel 252C3, subject to the following conditions:

- a. Nothing contained herein shall be construed as authorizing any change in license BLH-19950629KC, except for the channel as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301)
- b. Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH- 19950629KC, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

17. A filing window for Channel 251C1 at Madras, Oregon will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent *Order*.

¹³ The reference coordinates for Channel 251C1 at Madras, Oregon are 44-50-02 NL and 120-45-55 WL.

¹⁴ The coordinates for Channel 252C3 at Bend, Oregon are 44-04-41 NL and 121-19-57 WL.

¹⁵ The coordinates for Channel 255C3 at Prineville, Oregon are 44-13-30 NL and 120-46-30 WL.

18. The petition for rulemaking filed by Muddy Broadcasting Company proposing the allotment of Channel 251C3 at Brightwood, Oregon, IS DENIED.

19. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

20. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau (202) 418-2180. Questions related to the application filing process for Channel 251C1 at Madras, Oregon should be addressed to the Audio Services Division, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
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